FILED

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No. OFFICE OF THE CLERK

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

MIRIAM SOFFER,

Petitioner,

v.

THE BOARD OF TRUSTEES OF THE CITY UNIVERSITY OF NEW YORK, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SECOND CIRCUIT OF NEW YORK

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1) Whether Second Circuit entry of its May 2, 1996 order is void becuase the order is defective its form and in the law. None of the order's rendering judges signed it. And the order was rendered by the Judges in excess of jurisdiction, as the Court did not direct them to sit on that date in session, which is required by 28 U.S.C., Section 46(a);(b) and 48(a);(b), and as by doing so they violated petitioner's Due Process rights under the Fifth Amendment.

2) Whether Second Circuit by its refusal to hear petitioner's oral arguments, which its Rule 27(b) grants to all litigants similarly situated, violated petitioner's Due Process and the Equal Protection of the Laws rights under the Fifth Amendment ?

3) Whether Second Circuit should be instructed to void its entry of its July 6, 1995 order, as it was made in absence of Court's direction to its panel to sit in session during court's recess, and in absence of Court's assignment of the case to that panel ?

4) Whether entry of Second Circuit Clerk's order is void, as it was made in absence of Congress grant of judicial powers to clerks of courts of appeals to act on application to the court pursuant to Rules 26(b) and 27(b) of FRAP seeking the vacation of the clerk's scheduling order ?

5) Should entry of Second Circuit Clerk's appeal dismissal be voided as it has been based on the latter's same date order ? If so should the appeal be forthwith restored to the court's calendar?

6) Should respondents be ordered to restore petitioner to her job from which they dismissed her as retaliatory measure during the pendency of court proceeding ?

LIST OF THE PARTIES

The BOARD of TRUSTEES Of The CITY UNIVERSITY Of NEW YORK (BOT); JAMES P. MURPHY, individually and as Board of Trustees of the City University of New York (BOT/CUNY) Chairperson; EDITH B.EVERETT, individually and as BOT/CUNY Vice Chairperson; BLANCHE BERNSTEIN, individually and as a member of the BOT; SYLVIA BLOOM, individually and as a member of the BOT; MARIA JOSEFA CANINO, individually and as a member of the BOT; GLADYS CARRION, individually and as a member of the BOT; LOUIS C. CENCI, individually and as a member of the BOT; MICHAEL DEL GIUDICE, individually and as a member of the BOT; STANELY FINK, individually and as a member of the BOT; WILLIAM R. HOWARD, individually and as a member of the BOT; ABDULLAH MUHAMMAD, individually and as a member of the BOT; CALVIN PRESSLEY, individually and as a member of the BOT; BRENDA FARROW WHITE, individually and as a member of the BOT; PAUL P. BAARD, individually and as a member of the BOT; ARMAND D'ANGELO, individually and as a member of the BOT; JUDAH GRIBETZ, individually and as a member of the BOT; ROBERT POLK, individually and as a member of the BOT; JOAQUIN RIVERA, individually and as a member of the BOT; MARGARET A. TILTON, individually and as a member of the BOT; FLARIDA NEGRON, individually and as a member of the BOT; JOSEPH S. MURPHY, individually and as Chancellor of the City University of New York; DAVID B. RIGNEY, individually and as Vice-Chancellor for legal affairs and General Counsel to the BOT; NICHOLAS R. SANTANGELO, individually and as Associate Counsel and as Special

Counsel in the Office of Legal Affairs of the City University of New York; RICHARD BARSAM, individually and as Chairperson, University Committee on Research; JOHN DOE, individually and as evaluator of PSC/BHE proposal 18/56; SHIRLEY STRUM KENNY, individually and as President of Queens College of the City University of New York; STEWART L. GORDON, individually and as former Acting Provost of Queens College of the City University of New York; MARVIN TAYLOR, individually and as Acting provost of Queens College of the City University of New York; JOHN H. RIELLY, individually and as the Dean of Faculty of the Humanities and the Arts at Queens College of the City University of New York; JOEL B. LIDOV, individually and as the Chairperson of the Department of Classical and Oriental languages at Queens College of the City University of New York; JEROME ACKER, individually and as Hebrew section Coordinator of the Department of Classical and Oriental Languages at Queens College; LOLA LOCKER individually and as Special Assistant to the President and Labor designee at Queens College of the City University of New York, MARTIN J. WARMBRAND, individually and as Secretary of the BOT,

Defendants.

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Second Circuit May 2, 1996 Order, which none of its rendering judges signed, and which was signed "For The Court" on behalf of Clerk George Lange III by Ms. Beth Meador, Administrative Attorney, did not cite any reason for denying Court's own motion for reconsideration.

Petitioner's letter of March 22, 1996, which sought clarification of Hon. Roger J. Miner's July 6, 1995 Order, made in absence of quorum, during Court's recess, and which the Judge signed on behalf of Hon. Frank X. Altimari and Hon. Fred I. Parker was entered on March 28, 1996 as Court's Motion for Reconsideration.

The order was entered on May 2, 1996 and is reprinted in Appendix A, pages 1a-2a.

It appears that the above referenced order sanctioned the following Second Circuit orders:

1. The July 6, 1995 order, which Hon. Roger J. Miner rendered during Court's recess, without affording petitioner a hearing of oral arguments did not cite a reason for denying her application to certify questions of law to the United States Supreme Court for instructions.

The order was entered on July 6, 1995 and is reprinted in Appendix B, pages 3a-4a.

2. Second Circuit Clerk's order of February 7, 1991 which denied, in absence of jurisdiction, application to the Court made pursuant to Rules 26(b) and 27(b) of

Federal Rules of Appellate Procedure (FRAP) for vacation of the latter's scheduling order and for extension of time to file brief.

Second Circuit Clerk's order of February 7, 1991 was entered on that date and is reprinted in Appendix C, pages 5a-6a.

3. Second Circuit Clerk's appeal's dismissal, which in accordance with docket entry of February 7, 1991 relied on the latter's same date's order denying application to the Court pursuant to Rules 26(b) and 27(b) of FRAP.

Second Circuit Clerk's February 7, 1991 appeal's dismissal was entered on that date on the docket, and is reprinted in Appendix D, pages 7a-8a.

4. The August 10, 1990 complaint dismissal by ex parte order of the district court, which violated Rule 6(b) of Court's Civil Rules requiring the support of affidavit showing cause therefor for the grant of an ex parte order, and not a letter forwarded by telefax as was done by defendants attorneys.

The August 10, 1990 ex parte order was entered on August 29, 1990 is reprinted in Appendix Part E, page 9a.

Defendants attorneys letter forwarded by telefax to the Eastern District Court is reprinted in Appendix F, pages 10a-11a.

STATEMENT OF JURISDICTION

Jurisdiction of this court is invoked by 28 U.S.C., Section 1254(1); 28 U.S.C., Section 2106, and United States Supreme Court Rule 10.1.(a).

This petition seeks the review and the exercise of the United States Supreme Court's supervisory powers over the Court of Appeals for the Second Circuit of New York (Second Circuit), which departed from the usual and accepted course of judicial proceedings by the entry of the May 2, 1996 order that was rendered in excess of judges jurisdiction thus sanctioning the orders of:

1) July 6, 1995 order, which was made during court's recess, in absence of quorum.

2) Second Circuit Clerk's order of February 7, 1991 made by the latter in absence of jurisdiction. The order denied application to the court made pursuant to Rules 26(b) and 27(b) of FRAP for vacation of Clerk's scheduling order and for extension of time to file brief.

3) Second Circuit Clerk's appeal's dismissal of February 7, 1991, which was based on Clerk's same date order that denied, in absence of jurisdiction, application to the court, and which violated Rule 45(c) of FRAP and Rule 0.18(7) of Second Circuit Rules.

4) The district court dismissal of the complaint by the entry of its ex parte order of August 10, 1990.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

(Text is set forth in Appendix J, pages 17a - 22a)

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INTRODUCTION

Miriam Soffer respectfully petitions for a writ of certiorari for the review and for the exercise of the United States Supreme Court supervisory powers over the United States Court of Appeals for the Second Circuit of New York (hereinafter Second Circuit), which departed from the accepted and usual course of judicial proceedings by entering on May 2, 1996 an order defective in form, as it was not signed by any of the judges rendring it. The order has been signed "For The Court" on behalf of Clerk George Lange III, by Ms. Beth Meador, Administrative Attorney. And by the entry of the above referenced order, which was made in excess of the panel of judges jurisdiction, as the panel was not directed by the court Court to sit on that date in session and to determine the matter. The order is reprinted in Appendix A, pages: 1a-2a.

Petitioner also seeks the review of Second Circuit Order of July 6, 1995 (the order is reprinted in Appendix B, pages: 3a-4a), which the May 2, 1996 order sanctioned. The July 6, 1995 order was rendered by Hon. Roger J. Miner in absence of Court's direction to the Judge to sit in session on that date, and to hear and determine during court's recess petitioner's application of April 1, 1995 seeking certification of questions of law to the United States Supreme Court for instructions. Second Circuit thus denied petitioner the hearing of oral arguments violating its own Rule 27(b), which grants such a hearing to all litigants similarly situated.

This petition also seeks the review of Second Circuit Clerk's February 7, 1991 dismissal of the appeal, which was made in absence of the latter's jurisdiction, and which was sanctioned by Second Circuit orders of May 2, 1996, and July 6, 1995 (Second Circuit appeal's dismissal of February 7, 1991 is reprinted in Appendix D, pages: 7a-8a). Second Circuit docket entry of February 7, 1991 asserts that the Clerk's appeal's dismissal is based on the latter's same date order, which denied in absence of jurisdiction application made to the Court pursuant to Rule 26(b) of Federal Rules of Appellate Procedure (hereinafter FRAP) for vacation of Clerk's arbitrary scheduling order, and for extension of time to file brief. (Page #9 of Second Circuit docket entries is reprinted in Appendix G, pages: 12a-14a). (Clerk's February 7, 1991 order denying the application to the Court pursuant to Rule 26(b) of FRAP is reprinted in Appendix C, pages 5a-6a).

This case presents the undue process and the unequal protection of the laws, which is the predicament of a litigant, such as the petitioner, who represents himself/Herself in the federal courts of New York.

It appears that acts of collusion between the respondents, appellees in the Second Circuit, defendants in the Eastern District Court of New York (hereinafter district court) together with non judicial court employees, caused the premature termination without adjudication of petitioner's appeal. Second Circuit Clerk's appeal's dismissal prior to the elapse of nine months of its docketing,

in violation of Rule 0.18(7) of Second Circuit Rules, demonstrates the extent of the collusion between the respondents, their attorneys with Second Circuit Clerk and deputies.

The appeal was taken from the district court, Hon. Thomas C. Platt, Chief Judge, ex parte order, which dismissed the complaint.

STATEMENT OF THE CASE

A. Background

Petitioner, Miriam Soffer, a full time faculty member since Fall 1969 of the department of Classical and Oriental Languages at Queens College of the City University of New York, filed on September 14, 1989 a complaint in the District Court citing employer's, The Board Of Trustees Of The City University Of New York (hereinafter BOT/CUNY), civil rights violations. The action was brought pursuant to the Equal pay Act of 1963 and Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C., Section 2000e et seq.; 42 U.S.C., section 1983, the Fourteenth Amendment to the United States Constitution, State of New York Human Rights Law, Article 125, Section 6202(1); (2);(3), and Sections 6203; 6204; 6205; 6206 1(a), (7); 6207; 6208 et seq. of the State Education Law, Article 14 of the Civil Service Law of the State of New York. The action sought declaratory and injunctive relief, restoration of petitioner's vested rights in workloads established in the Collective Bargaining Agreement of the 1971-1972 academic year, between the above referenced employer and the Union, as well as the equalization petitioner's workloads to those assigned to her departmental male counterparts.

Petitioner also sought the correction of the unlawful pay and employment practice based on sex. And she further sought compensatory and treble damages, as well as attorney's fees and costs against the defendants, who acting individually and in concert, have deprived her without due process of her property interest in her employment.

The complaint was never adjudged in the district court due to its premature dismissal made by Hon. Thomas C. Platt's ex parte order of August 10, 1990.

The August 10, 1990 ex parte order is reprinted in Appendix E, page 9a.

The above referenced order was rendered in violation of Rule 6(b) - Orders of Court's Civil Rules, which asserts that: " No ex parte order shall be granted unless based on an affidavit showing cause therefor...".

The defendants attorneys forwarded by fax their application for the dismissal of the complaint, while failing to support it by an affidavit showing cause therefor.

The above referenced attorneys referred in their letter application to Rule 2 of Court's Civil Rules, and they cited petitioner - plaintiff's failure to furnish her address as the reason for the demand of dismissal. The above demand was a frivolous one, as the respondents - defendants in the district court, being plaintiff's employer knew her work place address, which was sufficient for service of any papers they desired to serve.

Furthermore, Rule 2 of Court's Civil Rules asserts that:

" ...the court... in proper case, on motion, may direct that the proceedings on the part of the non-complying party be stayed, or make such order as justice requires."

As defendants attorneys merely forwarded by fax a letter application, and failed to file the required motion, the district court should have never granted their application. (Attorneys faxed letter application is reprinted in Appendix F, pages 10a-11a).

A timely appeal was filed and due fees were paid. However, as petitioner moved the Court pursuant to Rule 26(b) of Federal Rules of Appellate Procedure (hereinafter FRAP) for vacation of Clerk s arbitrary scheduling order and for an extension of time to file brief, the latter acted on the motion in absence of jurisdiction, and denied it. Simultaneously, while relying on her same date order, the Clerk dismissed the appeal.

B. Facts Regarding Second Circuit's Motion For Reconsideration

By letter dated March 22, 1996, to Hon. Roger J. Miner, petitioner sought the Judge's clarification of his July 6, 1995 order, which was rendered by him during Court's recess, in absence of quorum, and which he signed on behalf of two absent Judges: Hon. Frank X. Altimari, and Hon. Fred I. Parker.

The above referenced letter was construed by the Court as a motion for "Reconsideration", which was entered on the docket on March 28, 1996.

Notwithstanding docket's assertion that notice of the motion was mailed to the parties, petitioner never received such notice. (See Page #9 of docket entries, reprinted on Appendix G, page 13a).

Second Circuit motion for reconsideration of March 28, 1996, was denied on May 2, 1996 by the following panel of Judges: Hon. Roger J. Miner, Hon. Frank X. Altimari, and Hon. Fred I. Parker, who failed to sign their order.

The above referenced order was signed by Administrative Attorney Beth J. Meador on behalf of Clerk George Lange III, For The Court. (See Appendix A, pages 1a-2a).

It appears that no written or oral order has been made by the above referenced panel of Judges, which would allow an administrative attorney to sign the said order on behalf of the "Clerk For The Court".

Second Circuit May 2, 1996 order was made in absence of Court's direction to the judges to sit in session.

Checking the May 2, 1996 issue of the New York Law Journal discloses that the only panel of the Second Circuit sitting in session on May 2, 1996, consisted of Hon. Newman, Chief Judge, Hon. Feinberg and Hon. Oakes, former Chief Judges

(Reprint of pertinent part of Clerk George Lange III Notice to the New York Law Journal issue of May 2, 1996, appears in Appendix H, page 15a).

The above referenced order sanctioned Second Circuit Order of July 6, 1995 made during Court's official recess.

The May 2, 1996 order also sanctioned second Circuit Clerk's February 7, 1991 order, by which the latter denied application to the Court made pursuant to Rule 26(b) of FRAP, which sought the vacation of the Clerk's scheduling order and which also sought an order of extension of time to file brief.

The said order further sanctioned the Clerk's appeal's dismissal based on her same date unjurisdictional order.

C. Proceedings And Lack Of Proceedings In The Court Of Appeals For The Second Circuit

Petitioner, appellant in the Second Circuit, appealed the ex parte order of August 10, 1990, of the district court, Hon. Thomas C. Platt, who granted defendants' attorneys faxed letter application, which cited a non existing clause of Rule 2 of Court's Rules, for the dismissal of her complaint.

The proceedings in the Second Circuit were virtually non proceedings, as they were conducted and determined without

exception by Supervisory Staff Attorney Catherine J. Minuse, who acted on behalf of Clerk Elaine B. Goldsmith, denying applications to the Court for extension of time to file brief and appendix, and by deputy clerks, who entered on the docket the latter's denial orders. The Clerk and deputies falsely entered as appellees affidavits, Ms. Marilyn T. Trautfield affidavits filed in opposition to appellant's motions for extension of time to file brief made pursuant to Rule 26(b) of FRAP (See docket entries reprinted in Appendix G, pages 12a- 14a).

The docket lists Ms. Nancy Miller Lerner as appellees' attorney. Thus, the clerk and deputies had full and complete knowledge that Ms. Marilyn T. Trautfield, assistant attorney general, was not appellees's attorney of record and had no standing to file any papers on behalf of the appellees. However, Supervisory Staff Attorney, Catherine J. Minuse took into consideration the latter's February 4, 1991 affidavit in opposition, and on its basis denied on behalf of the Clerk, on February 7, 1991, appellant's application to the Court for extension of time to file brief. Then, based on the above referenced order made in absence of Clerk's jurisdiction, Deputy Clerk Mario Giscome dismissed the appeal on behalf of the Clerk, once again in absence of the latter's jurisdiction.

Second Circuit Clerk refused to order appellees to maintain status quo. Due to the latter's return of a motion made to the Court seeking an order requiring the appellees to maintain status quo, did the

said appellees feel free to resort to further retaliatory acts of trespass on appellant's books, instructional materials, research, etc., and on dated materials, which were placed on her desk, that appellees by their agents dumped into unmarked boxes, which were they sealed and removed from appellant's office in her absence. The respondents resorted to theft of petitioner's services by their refusal to pay her due salary for services granted. Respondents retaliatory acts culminated with the dismissal of petitioner from her job during the pendency of court proceedings.

Petitioner attempted to restore her appeal to the Court's calendar by filing a motion for certification of questions of law to the United States Supreme Court for instructions on April 1, 1995, seeking the hearing of oral arguments on the Court's motion day of April 11, 1995.

The above referenced motion was denied on July 6, 1995 by Hon. Roger J. Miner during Court's official recess. The July 6, 1995 order was made in absence of Court's direction to the Judge to sit in session, and to hear and to determine the above referenced application.

Second Circuit Clerk, George Lange III, advised the Bar of Court's recess on July 6, 1995 by notice placed on that date in the New York Law Journal (Pertinent part of Clerk George Lange III Notice to the Bar is reprinted in Appendix I, page 16a).

The existence of the July 6, 1995 order came to petitioner's knowledge on September 27, 1995, upon her telephone query to the Second Circuit Clerk's Office regarding the setting of a date certain for oral arguments on the motion.

Petitioner received a certified copy of the July 6, 1995 order on September 29, 1995, five days before the due date for filing a petition for writ of certiorari to the United States Supreme Court. Three of the remaining five days were Saturday, Sunday, and Yom Kippur - the holiest day on the Jewish calendar. Thus, hardly two working days were left for the preparation of the petition. As the United States Supreme Court's requirements for the preparation of the petition could not be met with in the short period of time left, petitioner sought by application to Hon. Justice Clarence Thomas an extension of time to file the petition. According to a letter dated October 17, 1995 signed on behalf of Supreme Court Clerk, Hon. William K. Suter by assistant clerk, Mr. Jeffery Atkins, the application was denied on that date by Hon. Justice Ruth Bader Ginsburg (hereinafter Hon. Ginsburg).

A copy of the Justice's order noted on the application was sought by letter dated November 30, 1995 addressed to Supreme Court Clerk, Mr. William K. Suter.

However, the above referenced letter was never responded to.

Second Circuit construed petitioner's

letter of March 22, 1996 addressed to Hon. Roger J. Miner, as a motion for reconsideration, which was entered on March 28, 1996, and acted upon it on May 2, 1996.

Second Circuit panel of Judges rendered its May 2, 1996 order notwithstanding absence of Court's direction to it sit on that date in session and to determine the matter.

D. Proceedings And Lack Of Proceedings In The Eastern District Court Of New York

The proceedings in the Eastern District Court of New York (hereinafter district court) were conducted - without exception - by ex parte orders made by Hon. Thomas C. Platt, Chief Judge (hereinafter Hon. Platt). Hon. Platt exceeded his jurisdiction by his grant of an ex parte order of enlargement of time to answer the complaint to unauthorized attorneys, who admitted their non standing status in their January 3, 1990 letter to the Judge, by asserting that none of the defendants requested their office's representation. Assistant Attorney General, Ms. Nancy Miller Lerner and Assistant Attorney General, Ms. Marilyn T. Trautfield (hereinafter Ms. Lerner and Ms. Trautfield) asserted in their January 3, 1990 letter as follows:

> "...This office has not yet received requests for representation from any of the individually named defendants Until such requests are received we are unable to answer or move on their behalf..."

The above referenced attorneys, while violating Court's Civil Rules 1, 2, 3, and 6, and while further violating their oath to protect the United States Constitution, sought the following relief on behalf of possible future clients.

> "...We therefore respectfully request an enlargement of time within which to answer or move with respect to the complaint until March 31, 1990..."

The above undue relief was sought by attorneys' application made by ex parte letter, which in violation of Court's Rules, was not supported by affidavit showing cause therefor.

Ms. Lerner and Ms. Trautfield willfully concealed from Hon. Platt his lack of personal jurisdiction over the defendants. The above referenced unauthorized attorneys, failed to advise Hon. Platt that he lacked personal jurisdiction over the defendants due to their acts in bad faith, which consisted of their refusal to acknowledge receipt of service of process by mail, refusal to appear themselves, and further refusal to authorize attorneys representation and appearance on their behalf.

Personal service of process was effected upon the defendants by a professional process server, more than two months after Hon. Platt granted an ex parte order of enlargement of time to the above referenced unauthorized attorneys.

However, even after a professional

process server effected service of process upon the defendants, they failed to timely answer the complaint. The defendants defaulted knowing that the January 4, 1991 ex parte order of enlargement of time granted by Hon. Platt could not be relied upon due to its grant by a judge lacking personal jurisdiction over them. Furthermore, considering their previous acts in bad faith, defendants could not seek a second order of enlargement of time.

Under the above referenced circumstances, Default Judgement was demanded by petitioner, plaintiff in the court below.

Default judgment was not granted.

By August 8, 1990 letter faxed to Hon. Thomas C. Platt, the above referenced assistant attorneys general, while representing the State Attorney General, demanded the dismissal of the complaint based on a non existing clause of Rule 2 of Court's Rules (attorneys' letter of August 8, 1996 is reprinted in Appendix E, pages: 9a-10a).

The reason given by defendants attorneys for the demand of the complaint's dismissal was that they did not have plaintiff's post office address and residence, and were thus unable to serve her with papers. The above referenced attorneys represented plaintiff's employer, the Board of Trustees of the City University of New York, to whom her place of work was

known, there was no reason for such dismissal, as their "papers" could be served at plaintiff's place of work.

The district court, Hon. Platt, granted the above faxed application by rendering an ex parte order dated August 10, 1990, which dismissed the complaint in its entirety. (The order is reprinted in Appendix F, page 11a).

REASONS FOR GRANTING THE WRIT
ARGUMENT

I

SECOND CIRCUIT MAY 2, 1996 ORDER, WHICH WAS RENDERED BY A PANEL OF JUDGES, WHOM THE COURT DID NOT DIRECT TO SIT IN SESSION, EITHER ON THAT DATE, OR ON THE INITIAL DATE OF JULY 6, 1995, HAS BEEN MADE IN EXCESS OF PANEL'S JURISDICTION, AND IS THEREFORE VOID.

Second circuit departed from the usual and accepted course of judicial proceedings by its refusal to adhere to the laws governing its procedures.

28 U.S.C., Section 46(a), asserts that:

> "Circuit judges shall sit on the court and its panels in such order and at such times **as the court directs..."**

28 U.S.C., Section 46(b), asserts that:

> "...In each circuit the court may authorize the hearing and

> determination of cases and controversies by separate panels each consisting of three judges..."

and it further asserts that:

> "...Such panels shall sit at the times and places and hear the cases and controversies assigned **as the court directs...**" (emphasis added).

28 U.S.C., Section 48(b) - Terms of Court, asserts:

> " Each court of appeals may hold special sessions at any place within its circuit as the nature of the business may require, and upon such notice as the court orders..."

Second Circuit panel consisting of Judges: Hon. Roger J. Miner, Hon. Frank X. Altimari, and Hon. Fred I. Parker, was not directed by the court to sit in session either on May 2, 1996, or on July 6, 1995 when the court was in recess.

According to Clerk's notice to the Bar published in the July 6, 1995 issue of the New York Law Journal (reprinted in Appendix H, page 17a) no regular or special session of the Second Circuit was conducted on that date. Therefore, Second Circuit order of that date is inconsistent with 28 U.S.C., Section 48 Term of Court, which asserts:

"(a) The court of appeals shall hold

> **regular sessions** at the places listed below, and at such other places within the respective circuits each court may designate by rule". (Emphasis added).

As the court was in recess on July 6, 1995, none of its judges were directed to sit as the Court's motions' panel on that date.

A check of Second Circuit Docket entries under No. 90-7918 discloses that the Court never assigned Hon. Roger J. Miner, Hon. Frank X. Altimari and Hon. Fred I. parker to sit as a motions' panel and to determine petitioner's application for certification of questions of law to the United States Supreme Court for instructions, during July 6, 1995, when the court was in recess.

By rendering its July 6, 1995 order second Circuit denied petitioner's rights to procedural due process, due process and equal protection of the laws guaranteed by the Fifth Amendment to the United States Constitution.

It has been established by Supreme Court's ruling that:

> "...Each of our due process cases has recognized, either explicitly or implicitly, that because **"minimum [procedural] requirements [are] a matter of federal law."**

Logan v. Zimmerman Brush Co., et al., 455 u.S. 422, 432.

It appears that Second Circuit panel of Judges, who rendered the July 6, 1995 order, also determined on May 2, 1996 Court's motion for reconsideration. However, the fact that the above referenced panel acted in excess jurisdiction can be learned from Second Circuit Clerk's notice to the Bar published in the New York Law Journal issue of May 2, 1996. In accordance with the said notice to the Bar it appears that the only panel the court directed to sit in session on that date consisted of the following Judges: Hon. Newman, Chief Judge, Hon. Feinberg and Hon. Oakes, former Chief Judges.

Second Circuit's May 2, 1996 denial of its own "Motion for Reconsideration" follows a procedure, which actually violates Rule 40 of FRAP - Petition for Rehearing.

Rule 40 of FRAP - Petition for Rehearing - asserts as follows:

> " **(a) Time for Filing; Content; Answer; Action by Court if Granted.** - A petition for rehearing may be filed within 14 days after entry of judgment unless the time is shortened or enlarged by order or by local rule... The petition must state with particularity the points of law or fact which in the opinion of the petitioner the court has overlooked or misapprehended and must contain such argument in support of the petition as the petitioner desires to present..."

(Text is reprinted in Appendix J, pages 17a-22a).

Rule 40(a) of FRAP creates an entitlement to present a petition for rehearing in a certain form, which consists of all points of law and fact. Petitioner was denied that entitlement, first when the Court construed her letter of March 22, 1996 as a "motion for Reconsideration", and second when she was not afforded the opportunity to bring to the court's attention any matter of law and further facts in connection with Court's July 6, 1995 order, and third, notwithstanding entry on the docket asserting that notice was sent to the parties, petitioner never received such notice.

In absence of Court's direction to its panel to sit in session on July 6, 1995, and in absence of such direction to the above referenced panel to sit in session on May 2, 1996, the orders rendered by the panel are void, and so are their entries.

Furthermore, Rule 40 deals with a matter which was heard and determined by a panel assigned to the case. In this instant matter no panel was assigned to the case, no hearing was ever conducted, thus, no rehearing could be due.

Even if it is assumed for the sake of argument, that the Second Circuit relied on Rule 2 of FRAP - SUSPENSION OF RULES, which asserts that:

"in the interest of expediting

> decision, or for other good cause shown, a court of appeals may, except as otherwise provided in Rule 26(b), suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction".

Then, there should have been a written direction of the Court, which is non existing in this case. And had such a direction been made by the Court, it would have been inconsistent with Rule 1(b) of FRAP: Rules Not To Affect Jurisdiction, which asserts that:

"These rules shall not be construed to extend or limit the jurisdiction of the courts of appeals as established by law." and it would also be inconsistent with Rule 47 of FRAP, which asserts that:

> "Each court of appeals by action of a majority of the circuit judges in regular active service may from time to time make and amend rules governing its practice not inconsistent with these rules..."

It has been established in Court's ruling that entry of orders made in excess of jurisdiction is void and can be vacated at any time.

In **TRIAD ENERGY CORP. V. THOMAS McNELL 110 F.R.D. 382, (S.D.N.Y. 1986)** the court asserted that:

"Reasonable time" limit in rule allowing default judgment to be set aside was not applicable to motion attacking judgment as void.

Fed. Rules Civ. Proc. Rule 60(b)(4) 28 U.S.C.A."

It has been established by Court's ruling that entry of an order, which violated due process is void.

" A "void" judgment is one where e.g. the court lacked personal or subject matter jurisdiction, or **entry of the order violated due process..."** **Ibid**, 382.

In order to ensure the integrity of the Second Circuit, which has so far departed from the usual and accepted course of judicial practice, the Supreme Court should intervene and exercise its supervisory powers over this court by instructing it to forthwith vacate the May 2, 1996 order.

It has been established in **Frazier v. Heebe** 484 U.S. 641 that:

"... Supreme Court supervisory powers over federal courts allow the Supreme Court to intervene to protect the integrity of the federal system..."

As petitioner was denied by the Second Circuit the procedures established by federal statues, the Supreme Court should exercise its supervisory powers over that court by instructing it to vacate its July 6, 1995 order.

II

FAILURE OF SECOND CIRCUIT PANEL OF JUDGES TO SIGN THEIR MAY 2, 1996 ORDER DEEMS IT VOID.

The May 2, 1996 denial order was made by the following Second Circuit panel of Judges whom the order refers to only by their last names: Hon. Miner, Hon. Altimari and Hon. Parker.

Notwithstanding the order's assertion regarding the presence of the above referenced Judges, during the order's rendering, none of them signed it.

Failure of the Judges to sign the order deems it void.

The United States Supreme Court denied review of **Ohio v. Williams** and supported the ruling that asserted:

> "...The failure of a judge to sign a search warrant rendered it void ad initio and required the suppression of evidence found in a search made pursuant thereto..."
>
> **fi 565 N.E. 201 563**
> **Ohio v. Williams**

As the Supreme Court supported the Ohio Court, which deemed an unsigned judge's order void, it should also void the unsigned order of Second Circuit of May 2, 1996.

III

DENYING PETITIONER A HEARING OF ORAL ARGUMENTS VIOLATED RULE 27(b) OF SECOND CIRCUIT RULES, THUS DEPRIVED HER THE DUE PROCESS AND THE EQUAL PROTECTION OF THE LAWS RIGHTS UNDER THE FIFTH AMENDMENT

Second Circuit Rule 27(b) - Motions to be heard at regular sessions of the court asserts in its pertinent part as follows:

> " Motions seeking substantive relief will normally be determined by a panel conducting a regular session of the Court... such motions will be normally noticed for a Tuesday when the court is in session, and the Court will hear oral arguments from any party desiring this..." (emphasis added).

Second Circuit Rule 27(b) creates an entitlement to a hearing of oral arguments on motions for substantive relief. Petitioner - appellant, who filed an application to the court to certify questions of law to the United States Supreme Court for instructions, was denied the opportunity to present to the Court her oral arguments. And Second Circuit rendering its July 6, 1995 order during Court's official recess, which a single judge signed on behalf of two absent judges, denied petitioner the due process and the equal protection of the laws guaranteed by the Fifth Amendment to the United States Constitution.

As petitioner was denied the procedures established by federal

statutes, the Supreme Court of the United States should exercise its supervisory powers over that court by instructing it to vacate its July 6, 1995 order, which denied petitioner the minimum hearing.

It has been asserted by the United States Supreme Court that:

> "... Thus it has become a truism that " some form of hearing is required before the owner is finally deprived of a protected property interest."
>
> **Logan v.Zimmerman, Ibid., 433.**
>
> "...the Due Process Clause grants the aggrieved party the opportunity to present his case and have its merit fairly judged. " **Ibid**, 433.

"...merely to accomplish the elimination of hearings on the merits, is to make the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause..." **Reed v. Reed**, 404 U.S. 71, 76 (1971).

IV

VACATION OF SECOND CIRCUIT JULY 6, 1995 ORDER IS WARRANTED, AS ITS RENDERING DURING COURT'S RECESS, IN ABSENCE OF QUORUM, DEEMS IT VOID.

Rule 0.14.- Quorum - of Second Circuit Rules asserts that:

(a) Two judges shall constitute a quorum...

(b) Unless directed otherwise, a panel of the court shall consist of three judges.."

Court's ruling in **Tobin v. Ramey**, C.A. La, 1953, 206 F2 505 established that:

> "The word "quorum" as used in subsection (d) of this section providing that a majority of number of judges authorized to constitute court of appeals or a division thereof shall constitute a quorum, means such number of members of court as may legally transact business..."

As the July 6, 1995 order was rendered in absence of two judges, it means that no quorum existed on that date, and therefore the order is void.

Second Circuit should be instructed to forthwith vacate its July 6, 1995 void order.

V

SECOND CIRCUIT CLERK'S ORDER, WHICH DENIED APPLICATION TO THE COURT FOR VACATION OF THE LATTER'S SCHEDULING ORDER IS VOID, AS CONGRESS DID NOT GRANT JUDICIAL POWERS TO CLERKS OF COURTS OF APPEALS TO ACT ON SUCH APPLICATIONS.

Congress did not grant to Clerk's of Courts of Appeals to act on application to the court pursuant to Rule 26(b) of FRAP, and pursuant to Second Circuit Rule 27(b) which seeks the vacation of Clerk's arbitrary scheduling order, and the grant for extension of time to file brief.

Rule 26(b) of FRAP - Enlargement of Time asserts that:

" The Court for good cause shown may upon motion enlarge the time prescribed by these rules or by its order for doing any act, or may permit an act to be done after the expiration of such time...

Rule 27(b) Determination of Motions for Procedural orders asserts that:

"... motions for procedural orders, including any motion under rule 26(b) may be acted upon at any time without awaiting a response thereto and pursuant to rule or order of the court, motions for specified types of procedural orders may be disposed of by the clerk. Any party adversely affected by such motion may by application to the court request consideration, **vacation** or modification of such action." (Emphasis added).

It appears that the Clerk acted in absence of jurisdiction, as she denied the specific application made to the Court for vacation of her arbitrary scheduling order.

Second Circuit should be instructed to vacate its Clerk's unjurisdictional order.

VI

SECOND CIRCUIT CLERK'S DISMISSAL OF THE APPEAL BASED ON THE LATTER'S SAME DATE ORDER IS VOID. THE COURT SHOULD BE INSTRUCTED TO VACATE ITS CLERK'S ORDER AND TO FORTHWITH RESTORE THE APPEAL TO ITS CALENDAR.

Second Circuit Clerk's dismissal of the appeal on the basis of the same date order denying the application to the Court demonstrates her abuse of office for the purpose of interference with petitioner's legal proceedings.

The clerk violated Rule 45 of FRAP - DUTIES OF CLERKS (c) Notice of Orders or Judgments, which requires the immediate notice of entry of orders be mailed to the parties by the clerk.

The clerk also violated Second Circuit Rule 0.18(7), which allows the clerk to dismiss an appeal only after the elapse of nine months of its docketing, and that did not occur in this instant matter.

The Second Circuit, thus sanctioned its Clerk's and deputies order denying appellant's application to the Court made pursuant to Rule 26(b) of FRAP. And it further sanctioned the dismissal of the appeal by its Clerk made in violation of Local Rule 0.18(7). It appears that the Second Circuit allowed its Clerk and deputies to render judicial decisions, while knowing that Congress never granted judicial powers to such officers of the Court.

Petitioner, who never had her day in Court was denied her constitutional rights to due process and equal protection of the laws guaranteed by the Fifth Amendment to the United States Constitution.

VII

SECOND CIRCUIT SHOULD BE INSTRUCTED TO ORDER RESPONDENTS TO FORTHWITH CEASE AND DESIST THEIR CONTINUOUS RETALIATORY ACTS, BY RESTORING PETITIONER TO HER JOB WITH ALL ITS DUE BENEFITS, WHICH THEY TERMINATED, WITHOUT DUE PROCESS, DURING THE PENDENCY OF COURT'S PROCEEDINGS.

Second Circuit Clerk's return of petitioner's emergency motion to the Court for an order seeking the cessation of respondents retaliatory acts, which the latter commenced during the pendency of Court's proceedings, caused them to feel free to continue their acts without any hinderance. As the proceedings in the Second Circuit were never concluded, the respondents, whose retaliatory acts culminated with the petitioner's job termination, carried out without due process, during the pendency of Court's proceedings, should be ordered to cease and desist their retaliatory acts by the forthwith restoration of petitioner to her job with all its due benefits.

CONCLUSION

For the forgoing reasons the petition for writ of certiorari should be granted.

Dated: New York, New York
July 31, 1996

Respectfully submitted
Miriam Soffer
393 West 49th Street
Apt. 3LL
New York, New York 10019
(212) 586 6535

APPENDIX A

ORDER OF WHICH REVIEW IS SOUGHT

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

GEORGE LANGE III
CLERK

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the second day of May one thousand nine hundred and six.

Present:

Hon. Judge MINER

Hon. Judge ALTIMARI

Hon. Judge PARKER

CIRCUIT JUDGES,

90-7918 Soffer v. Board of Trustees

UNITED STATES COURT OF APPEALS
FILED
MAY 2 1996
GEORGE LANGE III, CLERK
SECOND CIRCUIT

A Motion for Reconsideration having been filed herein by pro se appellant Miriam Soffer,

Upon consideration thereof, it is

Ordered that said motion be and it hereby is DENIED.

FOR THE COURT
GEORGE LANGE III, Clerk

By: /s/ Beth J. Meador

Beth J. Meador,
Administrative Attorney

recon frm
rec/07f

APPENDIX B

ORDER OF WHICH REVIEW IS SOUGHT

MB

E.D.N.Y.
89-CV-3053
Platt, J.

UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the sixth day of July one thousand nine hundred and ninety-five,

UNITED STATES COURT OF APPEALS
FILED
JULY 6 1995
GEORGE LANGE III, CLERK
SECOND CIRCUIT

90-7918

Miriam Soffer,
Plaintiff-Appellant,

v.

Board of Trustees of the City University of New York, et al.,
Defendants-Appellees.

A motion having been made to certify to the United States Supreme Court pursuant to 28 U.S.C. 1254(2), said motion is hereby denied.

/s/ Roger J. Miner

/s/ Frank X. Altimary per RJM

/s/ Fred I. Parker per RJM

Circuit Judges

A True Copy
/s/ George Lange III, Clerk
George Lange III

RJM FXA FIP

JUL 6 1995

APPENDIX C

ORDER OF WHICH REVIEW IS SOUGHT

United States Court of Appeal
For The Second Circuit

90-7918

Miriam Soffer,
Appellant,

- against -

Board of Trustees of the City University of New York, et al.,
Appellees.

Notice of Motion Vacation of previous Orders and Enlargement of Time to File Brief and Appendix.

Motion by:
Miriam Soffer
Dept. of Classical & Oriental Lang.
Queens College/CUNY
65-30 Kissena Blvd.
Flushing, New York
11367-0904

Opposing Counsel
Robert Abrams,
Attorney General
By: Nancy Miller Lerner
120 Broadway,
24th floor
New York, NY
10271

UNITED STATES COURT OF APPEALS
FILED
JAN 31 1991
ELAINE B. GOLDSMITH, CLERK
SECOND CIRCUIT

Has service been effected ? Yes
Oral argument desired ? Yes

Judge whose order is being appealed:
Hon. Thomas C. Platt.

Brief Statement of the relief requested: Vacation of previous orders made without authorization of a single judge. Appellant is harassed by defendants by acts of self help, trespass and threats to terminate her job, and thus needs enlargement of time to file brief and appendix by April 30, 1991, Appellees answer on May 30, 1991, Appellant's reply on June 17, 1991.

By: Miriam Soffer

Date: January 31, 1991

IT IS HEREBY ORDERED THAT THE MOTION IS HEREBY DENIED.

/s/ Elaine B. Goldsmith
By Catherine J. Minuse
Supervisory Staff Attorney
FEBRUARY 7, 1991

UNITED STATES COURT OF APPEALS
FILED FEB 7 1991
ELAINE B. GOLDSMITH, CLERK
SECOND CIRCUIT
A TRUE COPY
ELAINE B. GOLDSMITH, CLERK By Deputy Clerk

APPENDIX D

ORDER ON WHICH REVIEW IS SOUGHT

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT
UNITED STATES COURTHOUSE
FOLEY SQUARE
NEW YORK, 10007

ELAINE B. GOLDSMITH

Clerk

UNITED STATES COURT OF APPEALS
FILED
FEB 7 1991
ELAINE B. GOLDSMITH, CLERK
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, in the City of New York, on the seventh day of February, one thousand nine hundred and ninety one.

U.S. COURT OF APPEALS
DOCKET NUMBER: 90-7918

U.S. DISTRICT COURT and
DOCKET NUMBER: EDNY
89 CV 3053
Thomas C. Platt, CH.J.

A scheduling order in accordance with the Civil Appeals Management Plan of this Court having been entered therein, requiring the record on appeal, the appellant's brief and joint appendix to be filed on or before the dates stated on the scheduling order, and also providing that in the event of default by appellant the appeal shall be dismissed forthwith, and it appearing that the appellant has so defaulted, upon consideration of the appeal herein it is

ORDERED that the appeal be, and it hereby is dismissed.

ELAINE B. GOLDSMITH
Clerk
By

/s/ Mario Giscome

Deputy Clerk, USCA

PLEASE REFER TO THIS COURT'S DOCKET NUMBER IN ALL MATTERS

A TRUE COPY
ELAINE B. GOLDSMITH, Clerk
By

Deputy Clerk

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

----------X

Miriam Soffer,

Plaintiff,

-against-

Board of Trustees, et al.,

Defendants.

----------X

FILED
In Clerk's Office
U.S. District Court E.D.N.Y
Long Island Office
August 10, 1990
entered 8/29/90

DISMISSAL
ORDER
89-CV-3053 (TCP)
Pro Se

PLATT, CHIEF JUDGE

Plaintiff, pro se, having been directed to comply with Local Rule 2 and furnish defendants with her post office address and residence by order dated July 5, 1990, and plaintiff having failed to comply with Rule 2 within ten days from the date of service by defendants of July 5, 1990 amended conditional dismissal order, it is hereby ordered that all her claims in this and all related actions be dismissed.

SO ORDERED.

/s/ Thomas C. Platt

Chief Judge, U.S.D.C.

Dated: Uniondale, New York
August 10, 1990

APPENDIX F

STATE OF NEW YORK
DEPARTMENT OF LAW
120 Broadway
New York, NY 10271
(212) 341-2610

Robert Abrams
Attorney General
Howard L. Zwickel
Assistant attorney General in Charge
Litigation Bureau

August 8, 1990

VIA TELEFAX AND MAIL

Hon. Thomas C. Platt
Chief Judge
United States District Court
Eastern District of New York
Uniondale Avenue at Hempstead Turnpike
Uniondale, New York 11553

re: Soffer v. Board of Trustees, et al.,
CV-89-3053 (TCP) (Pro Se)

Your Honor:

Pursuant to Ms. Trautfield's August 1, 1990 letter to your law clerk, Laura A. Hastings, and as a result of plaintiff's failure to comply with this Court's July 5, 1995

order, enclosed is a proposed order of dismissal for your consideration and signature.

Inasmuch as the parties are scheduled to appear Friday, August 10, 1990 before Judge Stanton of the United States District Court for the Southern District of New York for a conference in connection with the action entitled Soffer v. Board of Trustees, 89 Civ. 7803 (LLS) (Pro Se), it would be helpful for Judge Stanton to have the benefit of this order at that time. Accordingly, we respectfully request that the Court enter the order as soon as practicable and advise Judge Stanton and the parties as soon as such action has been taken.

Thank you for your consideration in this matter.

Respectfully yours
/s/ Nancy Miller lerner
NANCY MILLER LERNER

/s/ Marilyn T. Trautfield
MARILYN T. TRUATFIELD
Assistant Attorney General

encls.
cc: Hon. Louis L. Stanton (w/ encl.)
Miriam Soffer (w/ encl.)

APPENDIX G

PAGE NO. 9 OF DOCKET ENTRIES UNDER SECOND CIRCUIT NO. 90-7918

INDIV PROSE
CLOSED
NA 2

Proceedings include all events.

90-7918 Soffer, et al. v. Board of Trustees, et al.

1/31/91 Appellant Miriam Soffer motion to extend time to April 30, 1991 filed (w/pfs). [162109-1] (prp)

2/5/91 Appellees Et Al affidavit in opposition to Soffer motion for extended time to file brief & appendix [162109-1] filed (w/pfs). (une)

2/7/91 Order FILED DENYING motion to extend time [162109-1] by Appellant Miriam Soffer, endorsed on motion dated 1/31/91. (prp)

2/7/91 This appeal [90-7918] is disposed by the order: dated 2-7-91 denying motion for extension of time to file brief CJM. (prp)

2/7/91 Order dismissing appeal pursuant to CAMP/CAEP for failure to comply with the scheduling order filed.

(prp)

2/11/91	Certified copy of order dated 2/7/91 disposing of the appeal issued to district court. (une)
3/19/91	Record on appeal RETURNED to lower court. No. of volumes 1 (rea)
4/3/95	Appellant Miriam Soffer motion to certify questions to the Supreme Court FILED (w/pfs). [634820-1] (pr22)
7/6/95	Order FILED DENYING motion certify questions [634820-1] by Appellant Miriam Soffer, (RJM, FXA, FIP). (pr23)
7/7/95	Letter sent to Appellant Miriam Soffer: from KB regarding appeal. (pr22)
3/28/96	Appellant Miriam Soffer motion to reconsider decision. FILED. [786489-1]
3/28/95	Copy of motion for reconsideration served on all parties. (pr23)

5/2/96 Order FILED DENYING motion to reconsider decision [786489-1] by Appellant Miriam Soffer. (RJM, FXA, FIP) (pr 23)

6/10/96 Letter sent to Appellant Miriam Soffer: updated docket sheet enclosed. (prp)

Docket as of June 10, 1996 2:28 pm

APPENDIX H

NEW YORK LAW JOURNAL
Thursday, May 2, 1996

U.S. COURTS

SECOND CIRCUIT COURT OF APPEALS
The following substantive motions noticed for today, Thursday, May 2, 1996 will be determined by the panel of judges sitting in room #1705 U.S. Courthouse at that time. See section 27(a) of the rules of the United States Court of Appeals for the Second Circuit Supplementing the Federal Rules of Appellate Procedure.

United States Courthouse
Room 1705, 10 A.M.
In re Doolittle

Court Notice
Subject to change at any time, the Bar is advised that the following is the schedule of the proposed sitting of this court:

United States Courthouse
Room 1705, 10 A.M.

May 1-2 - Newman, Ch. Judge, Feinberg, Oakes, C.JJ.

George Lange III, Clerk
Dated: April 25, 1996
New York, New York

APPENDIX I

NEW YORK LAW JOURNAL
Thursday, July 6, 1995

U.S. COURTS

SECOND CIRCUIT COURT OF APPEALS

New Court Notice

Subject to change, the Bar is advised that the Court will be in recess from Monday, July 2, 1995, and Wednesday, July 5, through Friday July 14, 1995.

Subject to change, the Bar is advised that the Court will observe Tuesday, July 4, 1995 (Independence Day) as a holiday.

George Lange III, Clerk
Dated: June 29, 1995
New York, New York

APPENDIX J

Constitutional Provisions And Statutes Involved

United States Constitution, Amendment V
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising inthe land or naval forces, or in the Militia, when in actual service in time of War or public danger, nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

28 U.S.C., Section 46(a).

Circuit judges shall sit on the court and its panels in such order and at such times as the court directs...

28 U.S.C., Section 46(b).
"...In each circuit the court may authorize the hearing and determination of cases and controversies by separate panels each consisting of three judges...

...Such panels shall sit at the times and places and hear controversies assigned as the court directs...

28 U.S.C., Section 48 Terms of Court.
(a) The court of appeals shall hold regular sessions at the places listed below, and at such other places within

the respective circuits each court may designate by rule.

(b) Each court of appeals may hold special sessions at any place within its circuit as the nature of the business may require, and upon such notice as the court orders. The Court may transact any business at a special session which it might transact at a regular session...

FEDERAL RULE OF APPELLATE PROCEDURE

Rule 1. SCOPE OF RULES
(b) Rules Not To Affect Jurisdiction.

These rules shall not be construed to extend or limit the jurisdiction of the courts of appeals as established by law.

Rule 2. - SUSPENSION OF RULES

In the interest of expediting decision, or for other good cause shown, a court of appeals may, except as otherwise provided in Rule 26(b), suspend the requirements or provisions of any of these rules in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction.

Rule 26.

COMPUTATION AND EXTENSION OF TIME

(b) Enlargement of Time. The Court for good cause shown may upon motion enlarge the time prescribed by these rules or by its order for doing the act, or may permit the act to be done after the expiration of such time;...

Rule 27. - MOTIONS

(b) Determination of Motions for Procedural Orders.
Notwithstanding the provisions of (a) of this Rule 27 as to motions generally, motions for procedural orders, including any motion under Rule 26(b), may be acted upon at any time, without awaiting a response thereto,...Any party adversely affected by such action may by application to the court request consideration, vacation or modification of such action.

Rule 40 - Petition for Rehearing.

(a) Time for Filing; Content; Answer; Action by Court if Granted. - A petition for rehearing may be filed within 14 days after entry of judgment unless the time is shortened or enlarged by order or by local rule... The petition must state with particularity the points of law or fact which in the opinion of the petitioner the court has overlooked or misapprehended and must contain such argument in support of the petition as the petitioner desires...

(b) Form of petition; Length. The petition shall be in a form prescribed by Rule 32(a), and copies shall be served and filed as prescribed by Rule 31(b) for the service and filing of briefs...

Rule 45. - DUTIES OF CLERKS

(c) Notice of Orders or Judgments.
Immediately upon entry of an order or judgment the clerk shall serve a notice of entry by mail upon each party to the

proceeding together with a copy of any opinion respecting the order or judgment, and shall make a note in the docket of the mailing..."

Rule 46. - ATTORNEYS

(a) Admission to the Bar of a Court of Appeals; Eligibility; Procedure for Admission. Any attorney who has been admitted to practice before the Supreme Court of the United States, or the highest court of a state, or another United States court of appeals, or a United States District Court... and who is of good moral and professional character, is eligible for admission to the bar of a court of appeals.

An applicant shall file with the clerk of the court of appeals, on a form approved by the court...an application for admission containing the applicant's personal statement showing eligibility for membership. At the foot of the application the applicant shall take and subscribe to the following oath or affirmation:

I,_____, do solemnly swear (or affirm) that I will demean myself as an attorney and counselor of this court, uprightly and according to law; and that I will support the Constitution of the United States.

Rule 47. - RULES OF COURTS OF APPEALS

Each court of appeals by action of a majority of the circuit judges in regular active service may from time to time make and amend rules governing its practice not inconsistent with these rules. In all

cases not provided for by rule, the court of appeal may regulate their practice in any manner not inconsistent with these rules.

SECOND CIRCUIT RULES

PART 1

Local Rules Relating to the Organization of the Court

0.14 Quorum

(a) Two Judges Shall Constitute a Quorum. If, at any time, a quorum does not attend on any day appointed for holding a session of the court, any judge who does attend, in absence of any judge, the clerk may adjourn the court for such time as may be appropriate. Any judge attending when less than a quorum is present at any time when the court is in recess may make any procedural order touching any suit or proceeding preparatory to hearing or decision of the merits. (See Part 2, Local Rule 27(f).

(b) Unless Directed Otherwise, a Panel of the Court Shall Consist of Three Judges.

If a judge of a panel of the court which has heard argument or taken under submission any appeal, petition or motion shall be unable to continue with the consideration of such matter by reason of death, illness, resignation, or incapacity, or shall be relieved of such consideration at the judge's request, the two remaining judges will determine the matter..."

0.18 Entry of Orders by the Clerk

7. Orders dismissing appeals in all cases where a brief for appellant has not been

filed within nine months of the docketing of the appeal and no stipulation extending the time for such filing has been filed.

27. Motions.

(b) Motions to Be Heard at regular Sessions of the Court.

Motions seeking substantive relief will normally be determined by a panel conducting a regular session of the court.

"...except as provided in subdivision (c) of this Rule, such motions will normally be noticed for a Tuesday when the court is in session, and the court will hear oral argument from any party desiring this..

UNITED STATES DISTRICT COURTS FOR THE SOUTHERN & EASTERN DISTRICTS OF NEW YORK
CIVIL RULES

Rule 2. Address of Party or Original Owner of Claim to be Furnished

A party shall furnish to any other party, within five (5) days after a demand, a verified statement setting forth said party's post office address and residence... Upon non-compliance with the demand, **the court**, on ex parte application, shall order the furnishing of the statement, and **in a proper case, on motion, may direct that the proceedings on the part of the non-complying party be stayed, or make such order as justice requires.**

Rule 6. Orders

(b) No ex parte order shall be granted, unless based upon an affidavit showing cause therefor...